

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF OHIO

03 JUL 21 PM 2:00

3 WESTERN DIVISION

4 UNITED STATES OF AMERICA, : CRIMINAL ACTION CR-1-02-054

5 Plaintiff, : Cincinnati, Ohio
6 : Monday, September 9, 2002

7 -vs-

8 WALTER PUGH, JR, and : Day 5 of jury trial
TYREESE PUGH, :

9 Defendants. : 9:00 a.m.

10 - - -
11 VOLUME V12 TRANSCRIPT OF PROCEEDINGS
13 BEFORE THE HONORABLE SUSAN J. DLOTT, JUDGE,
AND JURY14 - - -
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Court Reporter: Betty Schwab

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I N D E X

	<u>DEFENSE WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>RD</u>	<u>RC</u>	<u>FD</u>
3	JAMES CALHOUN					
4	(by Mr. Andrews)	795		834		
5	(by Mr. Felson)		811		838	
6	(by Mr. Thapar)		818		842	
7	ADRIAN JACKSON					
8	(by Mr. Andrews)	845		853		
9	(by Mr. Felson)		851		854	
0	(by Mr. Thapar)		851			
1	CORTES RENFRO					
2	(by Mr. Andrews)	856		873		
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1

PROCEEDINGS

2

THE COURT: Okay. Good morning, everybody.

3

Let's do the jury instructions first so we can get copies of those made.

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My law clerk, Mike Rich, has talked to all parties, and I think we have agreement on the additions and deletions and changes to the jury instructions. So I'm going to ask Mike to go over it with you, and, if there are any objections as he does each individual instruction, let us know if there is any objection to it.

11

Mike, I'm wondering if you can be heard.

12

MR. RICH: I'll move up there then.

13

14

Okay. The following jury instructions have been added to the set that we had given you.

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First, this is one entitled "Judicial Notice."

This states: I have decided to accept as proved the fact that Butler County is in the Southern District of Ohio even though no evidence was presented on this point. You may accept this fact as true, but you are not required to do so.

21

THE COURT: Is that all right with everybody?

22

MR. FELSON: No objection.

23

MS. CROSS: No objection.

24

25

MR. RICH: The next charge is entitled "Defense Theory." It reads: That concludes the part of my

1 instructions explaining the elements of the crime. Next I
2 will explain the defendants' position. The defense says
3 that the defendants were not present at the bank at the
4 time of the robbery and that the robbery was committed by
5 other individuals.

6 MS. CROSS: No objection.

7 THE COURT: Any objection?

8 MR. FELSON: No objection, except we were talking
9 about maybe separating the defendants. I think he's not
10 there yet.

11 MR. RICH: And then the instruction following
12 that would be entitled "Presence of the Defendants at the
13 Scene of the Crime," and that instruction would read: One
14 of the questions in this case is whether the defendants
15 were present at the bank at the time of the robbery. In
16 order to find Defendant Tyreese Pugh guilty, the government
17 must prove that he was present at the time and place in
18 question. Unless the government proves beyond a reasonable
19 doubt that Defendant Tyreese Pugh was present at the bank
20 at the time of the robbery, you must find him not guilty.
21 In order to find Defendant Walter Pugh guilty, the
22 government must prove that he was present at the time and
23 place in question. Unless the government proves beyond a
24 reasonable doubt that Defendant Walter Pugh was present at
25 the bank at the time of the robbery, you must find him not

1 guilty.

2 MS. CROSS: No objection.

3 MR. FELSON: No objection.

4 DEFENDANT W. PUGH: No objection.

5 THE COURT: Okay. Fine. Is that everything?

6 MR. RICH: One or two more.

7 THE COURT: Sorry.

8 MR. RICH: There was also a change to the
9 instruction that was originally entitled "Possession
10 Defined." It will now be entitled "Possession" and will
11 read: Next I want to explain something about possession.
12 The government does not necessarily have to prove that
13 Defendant Tyreese Pugh physically possessed the firearm
14 described in the indictment for you to find him guilty of
15 this crime. The law recognizes two kinds of possession,
16 actual possession and constructive possession. Either one
17 of these, if proved beyond a reasonable doubt by the
18 government, is enough to convict.

19 To establish actual possession, the government
20 must prove that Defendant Tyreese Pugh had direct physical
21 control over the firearm described in the indictment and
22 knew that he had control of it.

23 To establish constructive possession, the
24 government must prove that Defendant Tyreese Pugh had the
25 right to exercise physical control over the firearm

1 described in the indictment, and knew that he had this
2 right, and that he intended to exercise physical control
3 over the firearm at some time either directly or through
4 other persons. For example, if you left something with a
5 friend intending to come back later and pick it up or
6 intending to send someone else to pick it up for you, you
7 would have constructive possession of it while it was in
8 the possession of your friend. But understand that just
9 being present where something is located does not equal
10 possession.

11 THE COURT: Why don't you slow down a little?

12 MR. RICH: The government must prove that
13 Defendant Tyreese Pugh had actual or constructive
14 possession of the firearm and knew that he did for you to
15 find him guilty of this crime. This, of course, is all for
16 you to decide.

17 MS. CROSS: No objection.

18 MR. FELSON: My only thought is maybe "beyond a
19 reasonable doubt" has to be put in after at least one of
20 the "proved" words.

21 MR. RICH: It is in the first paragraph. It
22 states: Either one of these, if proved beyond a reasonable
23 doubt by the government, is enough to convict.

24 MR. FELSON: All right.

25 MR. RICH: Then, finally, there is, and this will

1 be entitled "Impeachment of a Witness Other Than
2 Defendant." It reads: You have heard the testimony of
3 Ra-Shay Patterson and Shanell Holston. You have also heard
4 that Ms. Patterson knows of an outstanding warrant for her
5 arrest and that before this trial she was convicted of a
6 crime. Further, you have heard that before this trial
7 Ms. Holston was convicted of a crime. This evidence was
8 brought to your attention only as one way of helping you
9 decide how believable their testimony was. Do not use it
10 for any other purpose. It is not evidence of anything
11 else.

12 MS. CROSS: No objection.

13 THE COURT: Any objection?

14 MR. FELSON: No.

15 MR. ANDREWS: We have an addition as it relates
16 to Ms. Patterson. I have no problem -- actually, I have a
17 problem with the whole thing. I object for the record in
18 general, because we objected to the testimony in total on
19 this issue.

20 THE COURT: I'm not sure what you're saying you
21 are objecting to.

22 MR. ANDREWS: Let me start out by saying we
23 object to anything to do with this bit of testimony that
24 came in as to Ms. Patterson. I just want to make that
25 clear before I go ahead and state what I would like done

1 with this.

2 THE COURT: Okay.

3 MR. ANDREWS: In addition to the line "you have
4 also heard Ms. Patterson knows of an outstanding warrant
5 for her arrest and before this trial she was convicted of a
6 crime," I would ask for the addition "for which she still
7 owed a fine," which was the testimony that she only owed a
8 fine, which is somewhat different than her running from an
9 open warrant for aggravated murder or running from a
10 warrant for doing time in prison. Her statement from the
11 stand is she owed a fine.

12 MS. CROSS: Your Honor --

13 MR. ANDREWS: Which I think is significantly
14 different than --

15 MS. CROSS: Your Honor, that's for the jury to
16 find. He can raise that in closing, and the jury can hear
17 it that way. Also, if Mr. Andrews has an objection to the
18 instructions, the United States would not have any
19 objection to taking out the entire instruction.

20 MR. ANDREWS: Well, we're caught in a Hobson's
21 choice in this instruction, Your Honor, as the Court's well
22 aware. We would object to any of this being in the record.
23 We believe it was good grounds for a mistrial. Now we're
24 trying to mitigate the harm done by this being admitted.
25 We believe the instruction is probably necessary under the

1 circumstances, though we don't believe any of this should
2 have been in front of the court, and, in that regard, we
3 would ask that the true nature of her testimony, which not
4 only was she had a warrant outstanding in Colorado in a
5 particular county, but what that warrant was for. It was
6 for nonpayment of fines. I mean, that's the totality of
7 her testimony on that issue.

8 THE COURT: I understand your position. I agree
9 with Ms. Cross that that's an issue of fact for the jury to
10 find. You have asked that question on cross-examination,
11 and she testified to that. And it's up to the jury to
12 decide whether they believe that or not. I don't want to
13 insert that.

14 I'll be glad to delete the instruction entirely
15 if you want it.

16 MR. ANDREWS: As I said, it's a Hobson's choice
17 for us.

18 THE COURT: So you want the instruction?

19 MR. ANDREWS: I believe we have to have the
20 instruction to mitigate somewhat, but I believe it should
21 have the further language.

22 THE COURT: Okay. I think we're ready to bring
23 in the jury.

24 Who's going to be your next witness for the
25 defense?

1 MR. ANDREWS: I will be doing the last few
2 witnesses, Your Honor. I want the Court to be aware it's
3 my understanding that the subpoenas we issued on Friday did
4 not get to the Hamilton Police Department until Saturday
5 for whatever reason, that present this morning is Officer
6 Calhoun. He is already here. Officer Jackson is on his
7 way and will be here, I'm sure, before Officer Calhoun's
8 testimony is completed is basically our understanding at
9 this point.

10 MR. THAPAR: Your Honor, I don't know if they
11 arrived there -- I'll address each of the points. I don't
12 know if they arrived there Friday or Saturday. The point
13 is the officers did not receive them in hand. He served
14 three subpoenas, I understand from --

15 THE COURT: I don't want to hear -- just tell me
16 who is here.

17 MR. THAPAR: Calhoun is here. Jackson is on his
18 way. And I have no idea about Nugent. He's retired and
19 doesn't work there.

20 THE COURT: Who?

21 MR. THAPAR: Detective Nugent.

22 THE COURT: You were going to take care of that.

23 MR. ANDREWS: We can go ahead without Nugent.
24 He's the most minimal of the officers. If he did not get
25 the subpoena and is not aware of it, we can't do anything

1 about that.

2 The final witness was Mr. Renfro. I contacted
3 Mr. Renfro yesterday afternoon, spent about an hour with
4 him at his house. He tells me that he will be brought here
5 by his brother. His brother has a special needs son who he
6 is driving to school as we speak and then will come here.
7 He felt that he would be here between 9:30 and 10 o'clock.
8 I told him, the way the witnesses were set up, that would
9 work fine.

10 THE COURT: All right. Then we are ready to
11 proceed. Who is your next witness?

12 MR. ANDREWS: Officer Calhoun.

13 MR. FELSON: Your Honor, while he's doing that,
14 could I bring one other point to your attention?

15 THE COURT: Yes. Quickly.

16 MR. FELSON: There was an issue coming up about
17 the testimony. I'm moving to strike some testimony, but
18 it's only relevant if Walter doesn't testify. Would you
19 like to address that now, or should we wait for the break
20 on that? It's probably not relevant now, because he has
21 chosen not to testify.

22 THE COURT: Let's deal with it later.

23 MR. FELSON: Okay.

24 (Jury present.)

25 THE COURT: Good morning to everyone. I

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1 apologize for the late start. There were some matters
2 regarding the jury instructions that we needed to get done
3 so we could have them. They will be printed up and ready
4 for the charge later on today.

5 The next witness of the defense is Officer
6 Calhoun. And, Officer Calhoun, you were already sworn in
7 previously in this case, so we don't need to do it again.

8 Mr. Andrews, you may proceed.

9 JAMES CALHOUN (Recalled)

10 DIRECT EXAMINATION

11 BY MR. ANDREWS:

12 Q. Officer, state your name for the record just in case
13 the jury forgot who you are.

14 A. Jim Calhoun.

15 Q. Officer, how are you employed?

16 A. I'm a detective with the City of Hamilton, Ohio,
17 Police Department.

18 Q. And you have four years of experience, as I recall, as
19 a detective?

20 A. That is correct, sir.

21 Q. Okay. On this present case that we're here in court
22 about, you initially were called out on that case on what
23 date?

24 A. The actual day that the robbery happened on the 24th.

25 Q. Okay. In your notes, the first notes that I have of

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1 yours start on the 26th. Was that just a mistyping on your
2 part?

3 A. That's the first time I actually typed notes into the
4 computer was that day on the 26th.

5 Q. Okay. So you date the notes the date you type them,
6 not the date that things took place?

7 A. That is correct.

8 Q. Am I correct? In your initial investigation at the
9 bank, we have talked all about that, and I'm not going over
10 that again. One piece of information that you picked up
11 was that there was a four-door Olds Cutlass maroon in color
12 that had been used in this alleged, well, in this robbery;
13 is that correct?

14 A. That is correct, yes, sir.

15 Q. You also found that same day or somewhere between the
16 24th and 26th that an identical vehicle had been stolen
17 from Trotwood, Ohio; is that correct?

18 A. That is --

19 MR. THAPAR: Your Honor, I'm sorry, Your Honor.
20 I'm just going to object. This is their witness.

21 MR. ANDREWS: I understand.

22 THE COURT: All right.

23 MR. ANDREWS: You can answer that.

24 THE COURT: Well, no. No, he can't.

25 MR. ANDREWS: Excuse me. Let me back up.

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1 THE COURT: I'm going to sustain the objection.

2 BY MR. ANDREWS:

3 Q. Did you become aware of another vehicle being stolen
4 from Trotwood, Ohio?

5 A. Yes, I did.

6 Q. That was a vehicle of what description?

7 A. I believe it was a maroon four-door Olds Cutlass.

8 Q. Okay. And that would then match the vehicle you have
9 been told had been used in this robbery?

10 A. It would match the description we had at that time,
11 yes.

12 Q. Okay. Now, did you pursue that lead?

13 A. Yes, we did.

14 Q. And what did you do to pursue that?

15 A. Sent a teletype to the Dayton Police Department, or I
16 don't know exactly if it was Dayton or who covers the
17 Trotwood area. Our communications center would know that.
18 But they sent a teletype to that area requesting that, if
19 the vehicle was found, to notify us, also giving them the
20 information we had on our bank robbery so that they would
21 know, I mean, the vehicle possibly matched our suspect
22 vehicle.

23 Q. Now, you had additional information relating similar
24 crimes in the Dayton area?

25 A. No, sir.

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1 Q. In your notes typed on that same date, there is a
2 notation relating to supposedly two people traveling from
3 Dayton to Hamilton. You want to see your notes to refresh
4 your memory on that?

5 A. Yes, if I could.

6 MR. ANDREWS: Steve, would you mark that? Sorry
7 I didn't make a copy.

8 THE COURT: Has the government seen these?

9 MS. CROSS: Yes.

10 THE COURT: Or do you have a copy of them?

11 MR. ANDREWS: Yes. They were produced by the
12 government for us.

13 THE COURT: You have a set for yourself,
14 Mr. Andrews?

15 MR. ANDREWS: No, I don't. I think maybe
16 co-counsel has a set.

17 BY MR. ANDREWS:

18 Q. Detective, I draw your attention to the last paragraph
19 on the first page.

20 A. Yes, sir.

21 Q. And you had information of -- what, at that time, is
22 reflected by that note?

23 A. That these two, meaning Walter and Tyreese, were
24 allegedly going back and forth between Cincinnati and
25 Dayton.

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1 Q. Engaged in what activity?

2 A. Knocked off a bank and recently knocking off drug
3 dealers in Dayton.

4 Q. And this would have been banks other than the one
5 we're talking about; is that correct?

6 A. I would assume that.

7 Q. Dayton and Trotwood are in close proximity; is that
8 correct?

9 A. I'm not real familiar. I know Trotwood is in the area
10 of the Dayton airport. I don't know --

11 Q. I just mean if, geographically, you looked at Dayton,
12 Ohio, they're in the same general geographic area?

13 A. I would assume so, yes, sir.

14 Q. As a suburb of Cincinnati would be?

15 A. I would assume that, yes, sir.

16 Q. You received that information from whom?

17 A. One of our retired detectives.

18 Q. And his name is?

19 A. James Nugent.

20 Q. Okay. And you had also been supplied, earlier on that
21 same date it appears, information from another police
22 officer; is that correct?

23 A. Yes, sir.

24 Q. And who was that?

25 A. Police Officer Adrian Jackson.

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1 call?

2 A. I didn't at the time, no.

3 Q. Did he know?

4 A. I don't know what he knew at the time, sir.

5 Q. Did you also receive -- did you receive any phone
6 calls from any other officers that day in relation to this
7 case?

8 A. Later on that evening, yes, sir.

9 Q. From whom?

10 A. Police Officer Adrian Jackson.

11 Q. And what did he tell you, if anything, at that time?

12 A. He told me that his informant was with him and wanted
13 to take us to Walter and Tyreese.

14 Q. Okay. And his informant was whom?

15 A. When I arrived at our agreed meeting location, it was
16 Shanell Holston.

17 Q. She had been his informant from the beginning of this
18 investigation; is that correct? Let me withdraw that. Do
19 you know who his informant had been since the beginning of
20 the investigation?

21 A. I don't know positively. I believe it was her, but I
22 don't know.

23 Q. And he supplied information, by my count, on
24 approximately five different occasions?

25 A. If that's your count, sir, that would seem reasonable.

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1 Q. Okay. Now, did you know Shanell Holston prior to
2 that?

3 A. No, sir.

4 Q. And had no -- you had no knowledge of her background?

5 A. No, sir.

6 Q. And you did not know at that time what her
7 relationship, if any, with Walter Pugh was?

8 A. No, sir.

9 Q. Now, on -- when did you first meet Stephanie Luster?

10 A. The night the Pughs were arrested.

11 Q. Okay. And on that evening, did you take a statement
12 from her?

13 A. No, sir.

14 Q. And when was the first statement that you took from
15 Stephanie Luster?

16 A. I would have to look at the date on the statement. I
17 believe it was May the 8th, but I would have to look at the
18 date on the statement itself.

19 Q. I believe you have those in your notes, sir, in front
20 of you. You might want to refer to those if they're
21 helpful.

22 MR. THAPAR: Objection, Your Honor. He's
23 referring to a specific statement. I don't think those are
24 in his notes, but, if he wants to show him the statement
25 he's talking about, the officer just said it would help him

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1 remember.

2 THE COURT: Do you understand the objection?

3 MR. ANDREWS: Kind of. Your Honor, I believe
4 it's referred to in the notes. But, if they're not, I can
5 provide him with a copy of the statement.

6 MR. THAPAR: I mean, I just think that's a
7 simple --

8 THE COURT: Yes, I understand your objection. If
9 you're going to ask him questions about the statement, you
10 need to give him the statement.

11 MR. ANDREWS: We will.

12 BY MR. ANDREWS:

13 Q. Is that the statement to which you refer?

14 A. Yes, sir.

15 Q. That's been handed to you and marked. Now, looking at
16 your notes again, what is the last entry on your notes?

17 A. May the 8, 2002, 2:30 in the afternoon.

18 Q. And it starts out with what line?

19 A. I interviewed Stephanie and got some good information
20 from her.

21 Q. This is the statement we are talking about?

22 A. Correct.

23 Q. So it was reflected in your notes?

24 A. Correct.

25 Q. Now, you had attempted to make special arrangements on

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1 behalf of Ms. Luster that day to have someone else present
2 during the interview?

3 A. No, sir. I didn't make any special arrangements.

4 Q. Will you look at your entry just above the one I just
5 referred you to? You want to take a moment to read that?

6 A. Oh, I did. I'm sorry. I forgot about that. Yes.

7 Q. And those arrangements were what?

8 A. Her mother wanted to speak with her, and I tried to
9 arrange to have her mother there.

10 Q. And you were bringing her mother from where?

11 A. The Butler County Jail.

12 Q. Okay. And that never took place, I take it, or did
13 it?

14 A. No. That one did not, no.

15 Q. Okay. Is it unusual to have someone brought from a
16 jail facility to the police station to be part of an
17 interview with a third party? And if you don't understand,
18 I'll try to ask it another way. That was not very artfully
19 asked. Have you made this kind of arrangement to have a
20 relative present in an interview with a witness when it
21 involves bringing them from a jail facility?

22 A. This is the first time that this had presented itself.

23 Q. So it is a fairly unusual thing to take place?

24 A. I have never had a relative in jail of someone I was
25 interviewing that wanted to speak with them, no.

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1 Q. Okay.

2 MR. ANDREWS: Mr. Snyder, could you hand
3 Detective Calhoun Defendants' Exhibit or the defendants'
4 exhibit book, please?

5 THE COURT: I'm sorry. Which one?

6 MR. ANDREWS: Please?

7 THE COURT: What exhibit?

8 MR. ANDREWS: The exhibit book. Open it to
9 Exhibit BB-4.

10 BY MR. ANDREWS:

11 Q. Officer, just to make sure you understand what that
12 exhibit is, would you turn back to BB? I don't think we
13 put a dash 1 after it, but it's just BB. Have you seen
14 that document before?

15 A. I don't recall seeing it before, sir.

16 Q. Okay. So you're unaware of the contents of this
17 document?

18 A. Yes, sir.

19 Q. Okay. So you did not participate in the preparation
20 of this document by Agent Moran?

21 A. No, sir, I did not.

22 Q. So the contents of it are wholly unknown to you and
23 would not in any way refresh your memory?

24 MR. THAPAR: Objection. Asked and answered. I
25 believe he said he didn't know about the contents.

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1 THE COURT: Sustained.

2 BY MR. ANDREWS:

3 Q. When did you become aware that Shanell Holston was a
4 girlfriend, if you will, of my client?

5 A. It was sometime after he was arrested. I don't know
6 if it was a day or two after that. I tried to talk to her
7 again to get some more information from her.

8 Q. And when did you become aware she was a jilted, for
9 lack of a better term, girlfriend?

10 A. That wasn't until some time later. I don't know on
11 what exact date, but it was some time later on.

12 Q. The motivation for a person giving you information is
13 important to you?

14 A. It can be, yes, sir.

15 Q. And the good information you refer to in your note of
16 May 8th, is that the statement that you took there?

17 A. Yes, sir.

18 Q. Now, Officer, did you ever follow up on the stolen
19 vehicle from the Trotwood area?

20 A. Yes, sir, I did.

21 Q. And was it located?

22 A. Yes, sir, it was.

23 Q. Where was it located?

24 A. Back in the same area where it was taken from.

25 Q. Which is -- never mind. Withdraw that. Did you

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1 follow up on the reports of drug dealers being robbed in
2 the Dayton area?

3 A. No, sir.

4 Q. Matter of fact, drug dealers being robbed in any area
5 are reasonably low priority for police?

6 A. They usually go unreported.

7 Q. And you have done some drug work?

8 A. No, sir.

9 Q. No?

10 A. No, sir.

11 Q. Have you been involved in any drug investigations?

12 A. No, sir.

13 Q. You were present at the search of Mr. Renfro's home?

14 A. No, sir.

15 Q. You were not present?

16 A. No, sir.

17 Q. Officer Cifuentes handled that aspect of the
18 investigation; is that correct?

19 A. That is correct.

20 Q. It is your information that no money was found in that
21 home; is that correct?

22 A. I believe, after reviewing property logs, \$56 was
23 found.

24 Q. Okay. You have heard the surreptitiously taped
25 conversation between Walter Pugh and Shanell Holston,

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1 correct?

2 MR. THAPAR: Your Honor, I'm going to object
3 again to the characterization of evidence and the leading
4 questions.

5 THE COURT: Sustained.

6 BY MR. ANDREWS:

7 Q. Have you heard the tape made between Walter Pugh and
8 Ms. Luster?

9 A. I don't believe there was a tape made between Mr. Pugh
10 and Ms. Luster.

11 Q. Excuse me. Not with Ms. Luster -- Ms. Houston --
12 Holston.

13 A. I heard a taped conversation between Shanell Holston
14 and Walter Pugh, yes, sir.

15 Q. Okay. Now, in that tape, at no time is there the
16 discussion of \$153,000; is that correct? I'll withdraw
17 that.

18 What is the amount of money discussed in this tape?

19 A. I believe it was 100,000, but I'm not positive. I
20 haven't heard the tape since the day it was made. That was
21 the only time I listened to it.

22 MR. ANDREWS: Thank you, Officer.

23 If we could have one moment, Your Honor.

24 Your Honor, I believe that concludes our direct
25 examination of Officer Calhoun.

CALHOUN - CROSS

1 THE COURT: Okay. Mr. Felson, do you have any
2 examination of this witness?

3 MR. FELSON: Yes, I do.

4 CROSS-EXAMINATION

5 BY MR. FELSON:

6 Q. Officer, you were talking about Ms. Luster's mother
7 was brought or there was some request to bring her from the
8 jail. From the Butler County Jail was it?

9 A. Yes, sir. I was going to try to bring her over from
10 the Butler County Jail. She wanted to speak with her
11 daughter.

12 Q. So, Ms. Luster, Stephanie Luster, requested you bring
13 the mother over?

14 A. No, sir. The mother wanted to speak to her daughter.

15 Q. How would you know that -- were you speaking to the
16 mother?

17 A. Yes, sir.

18 Q. Okay. How did you come to speak with the mother?

19 A. When the name Stephanie Luster came up, we began
20 looking for her mother, thinking she might know her
21 whereabouts or where her kid might be as a way to track her
22 down. We located the mother and spoke with her.

23 Q. And where was the mother?

24 A. In the Butler County Jail.

25 Q. For what?

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1 MR. THAPAR: Objection, Your Honor. What's the
2 relevance?

3 MR. FELSON: Motive.

4 THE COURT: All right. Overruled.

5 BY MR. FELSON:

6 Q. For what?

7 A. I don't know.

8 Q. Was it -- do you know if it was a felony or
9 misdemeanor?

10 A. I believe it was felony, but I don't know, sir.

11 Q. And so the mother wanted to speak to the daughter?

12 A. That is correct.

13 Q. Okay. Do you know what that was about? Did she tell
14 you why she wanted to speak to the daughter?

15 A. Yes, sir, because she didn't want to see her daughter
16 get in trouble for something other people allegedly did.
17 She wanted to tell her daughter to tell us the truth, to
18 cooperate with us.

19 Q. Okay. So did she -- well, her daughter was a suspect
20 at the time, in other words?

21 A. We weren't sure what involvement her daughter had.

22 All we were sure was her daughter was not in Hamilton
23 anymore, and the information we had was that she was with
24 the Pughs.

25 Q. Okay. And did you get that information from the

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1 mother?

2 A. We got that information from the mother. I don't know
3 where else. There were other sources on the street that
4 gave us that information, but the mother told us that they
5 were together, yes.

6 Q. It was just rumor, though, that they were together,
7 right? I mean the mother was in jail, wasn't she?

8 A. Correct.

9 Q. Did she just get to jail, or hadn't she been in jail
10 for a little while?

11 A. I don't know how long she had been in jail, sir.

12 Q. All right. Now, did the mother give a written
13 statement?

14 A. Yes, she did.

15 Q. Do you have a copy of that written statement?

16 A. No, I don't, not with me.

17 Q. Okay. Do you have any anywhere?

18 A. At the Hamilton Police Department.

19 Q. The mother's statement?

20 A. At the Hamilton Police Department.

21 Q. Can you get it faxed over here; is that possible?

22 A. It's locked in a filing cabinet. I've got the key.

23 Q. You have the only key?

24 A. To my filing cabinet, yes, sir.

25 Q. Okay. Was that statement provided to the prosecution?

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1 A. I believe it was, yes, sir.

2 Q. Okay. So they would have a copy of it, the U.S.
3 attorneys? You gave them a copy, right?

4 A. I gave it to Special Agent Moran. From there, I don't
5 know where it went.

6 Q. All right. Now, okay. Now, the mother was -- do you
7 know how much time she had left to do?

8 A. I don't know, sir.

9 Q. Do you know whether you or anybody else from your
10 department may have spoken to the judge or probation
11 officer on behalf of the mother to try to assist her in any
12 way with her case?

13 MR. THAPAR: Objection.

14 THE COURT: Go ahead. Mr. Thapar, go ahead and
15 make your objection.

16 MR. THAPAR: Objection. We have heard about
17 this, and the witness said he doesn't have any personal
18 knowledge; his only knowledge is according to what other
19 people may have known in the office, in the police
20 department.

21 THE COURT: Sustained.

22 BY MR. FELSON:

23 Q. Did Ms. Luster request any consideration for her
24 mother?

25 A. No, sir.

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1 Q. Not to you?

2 A. I don't know that she dealt with anyone else at the
3 police department, sir.

4 Q. All right. Now, let's talk about you mentioned jilted
5 lovers. Was Ms. Luster also a jilted lover?

6 MR. THAPAR: Your Honor, he never mentioned that
7 word. I think Mr. Andrews did.

8 THE COURT: Sustained.

9 BY MR. FELSON:

10 Q. You will agree that Shanell was a jilted lover. I
11 think you agreed to that earlier; is that right?

12 A. If that's how Mr. Andrews wants to characterize her.
13 That's his characterization, sir. I don't know what the
14 circumstances were surrounding their split-up. I don't
15 know.

16 Q. Do you know whether there was any sort of similar
17 relationship between Ms. Luster and Tyreese?

18 A. They were found together. I would assume that they
19 were still together.

20 Q. Okay. That's your testimony; they were together?

21 A. The night he was arrested, yes, sir.

22 Q. I understand that. But that she was not -- there was
23 no bad relationship between them; is that your testimony?

24 A. Yes, sir.

25 Q. Okay. And that's because you found them together?

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1 A. No one has ever said anything to the contrary, sir.

2 Q. All right. Did you ever interview Ra-Shay Patterson?

3 A. I dealt with Ms. Ra-Shay Patterson in the past, yes,

4 sir, but not in reference to this case.

5 Q. All right. Now, are you aware that there was some

6 newspaper articles on this case?

7 A. Yes, there were.

8 Q. Did you give the information to the newspaper?

9 A. It's my policy to never give information to the media

10 at all, sir.

11 Q. You're aware that somebody did?

12 A. Someone in our department has that designation, yes,

13 sir.

14 Q. Now, was at least one time there was believed to be a

15 third person involved in this?

16 A. There was the possibility of that, yes, sir.

17 Q. Okay. Well, that's the information that was given to

18 the newspaper, wasn't it?

19 A. It's what was in that article that I read.

20 MR. THAPAR: Your Honor, again I object. I would

21 ask that you ask Mr. Felson to keep the questions to the

22 witness' personal knowledge.

23 THE COURT: Sustained.

24 BY MR. FELSON:

25 Q. Well, you read the newspaper article, right?

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1 A. Yes. When it was supplied to me up here on the stand
2 the previous time I testified, yes, sir.

3 Q. Did you make any effort to correct the newspaper
4 article that mentions three people?

5 A. I didn't see a need to make any correction. I never
6 read the article before it was presented to me here, sir.
7 To go back and correct it now --

8 Q. Okay. You didn't read it at that time?

9 A. No, sir.

10 Q. All right. But I guess the description of the third
11 person was a male black. Was that the description; do you
12 recall?

13 MR. THAPAR: Your Honor, objection.

14 THE COURT: Sustained.

15 BY MR. FELSON:

16 Q. All right. This stolen vehicle in Dayton, you said it
17 was located in Dayton?

18 A. Yes, sir.

19 Q. Was it -- did anybody search it to determine whether
20 there was anything in it from the bank?

21 A. The police department that located it did look through
22 it for us, yes.

23 Q. But did you look through it?

24 A. No, sir, I did not.

25 Q. Do you know a Sergeant Jim Malone?

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1 A. He is our Juvenile Section supervisor.

2 Q. Is he the one in charge of giving information to the
3 newspapers?

4 A. He could be. He's one of my supervisors. So, if they
5 asked for information in reference to an investigation, he
6 could supply it.

7 Q. Who is Hamilton Police Sergeant Tom Kilbourne?

8 A. He's the sergeant in charge of the Public Affairs
9 Section.

10 Q. Is he the one -- that sounds more like the guy that
11 should give information for the newspaper.

12 A. Normally, that's the procedure, yes, sir.

13 Q. Did you talk to him about who was involved in this
14 case and how many people, suspects, they were looking for?

15 A. I believe, as I previously testified to, sir, no, I
16 did not.

17 Q. So you weren't aware what he told the newspapers?

18 A. No, sir.

19 MR. FELSON: All right. That's all. Thank you.

20 THE COURT: Mr. Thapar, Ms. Cross, do you wish to
21 cross-examine this witness?

22 MR. THAPAR: Yes, Your Honor. I will be doing
23 the cross-examination. Thank you.

24 CROSS-EXAMINATION

25 BY MR. THAPAR:

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1 Q. Good morning.

2 A. Good morning, sir.

3 Q. I'm going to start out talking about Ms. Luster's
4 mother and just want to go over -- you remember all the
5 questioning about that, right?

6 A. Yes, sir.

7 Q. Okay. A couple things I want to cover with you. They
8 said that -- or they asked you about whether Stephanie
9 Luster was in town. Did you also go to her apartment to
10 verify that she wasn't in town?

11 A. Yes, sir. In fact, we executed a search warrant on
12 her apartment.

13 Q. And she wasn't there, right?

14 A. That is correct.

15 Q. And they talked about Stephanie Luster and Mr. Pugh,
16 Tyreese Pugh. They used the word "jilted." Did you find
17 them in bed together on the 3rd?

18 A. The Hamilton County Sheriff's Department SWAT team
19 did, yes.

20 Q. And going back, and I'm sorry to jump around a little,
21 to her mother, did she know the defendants Walter and
22 Tyreese Pugh?

23 A. Yes, sir, she did.

24 Q. And is that why you talked to her?

25 A. Yes, sir.

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1 Q. And when you showed her the pictures of the bank
2 robbery, isn't it true that she identified Walter and
3 Tyreese Pugh?

4 MR. ANDREWS: Objection.

5 THE COURT: What's the basis?

6 MR. ANDREWS: Clearly hearsay, Your Honor. The
7 statement has not been produced. We have no idea what the
8 statement says. She is a witness, hasn't been called to
9 court. The only question was, as I understand, was she
10 interviewed and did they take the statement. I don't
11 believe that opens the door as to the contents of the
12 statement.

13 MR. THAPAR: Your Honor, it clearly does. They
14 asked why she was going to have her down to the police
15 department, why they talked to her. It is in the officer's
16 notes. In the notes, they refer to her. We're allowed,
17 once they open the door, to explain the contents and why
18 they did the things they did.

19 THE COURT: Overruled.

20 BY MR. THAPAR:

21 Q. Did she identify Mr. Walter Pugh?

22 A. She did.

23 Q. Did she identify Mr. Tyreese Pugh?

24 A. She referred to him with his street name as Butter,
25 yes.

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1 Q. Okay. And when you were trying to locate Stephanie
2 Luster, she put you in touch with Marty Jackson, right?

3 A. That is correct.

4 Q. And that's Ms. -- let me get the name right -- Shelly
5 Luster's brother?

6 A. Correct.

7 Q. And he said -- and she also told you that he said
8 Marty Jackson received a call from Stephanie in Georgia,
9 right?

10 A. Correct.

11 MR. ANDREWS: Objection. Being a little far on
12 the hearsay. We are now to the contents of a phone call
13 from Georgia to a third party described through a fourth
14 party to the officer.

15 MR. THAPAR: Again, Your Honor, it goes to --
16 this goes to Mr. Felson's questions about whether they knew
17 where Stephanie was. It's not offered for the truth of the
18 matter. It's offered for the state of mind of the officers
19 in determining where the defendants and Ms. Stephanie
20 Luster were.

21 THE COURT: Overruled.

22 BY MR. THAPAR:

23 Q. And so, through Ms. Shelly Luster, you determined that
24 Stephanie was in Georgia, correct?

25 A. Correct. She was attempting to make contact with